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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1D 2002 63177

PHILLIP GREGORY GIBSON, P.T.
840 B Hartnell Avenue
Redding, CA 96002

A C C U S A T I O N

Physical Therapist License No. PT 6982

Respondent.

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about December 16, 1974, the Physical Therapy Board of California issued Physical Therapist License Number PT 6982 to Phillip Gregory Gibson, P.T. (Respondent). The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2006, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2609 of the Code states:
The board shall issue, suspend, and revoke licenses and approvals to practice physical therapy as provided in this chapter.

5. Section 2660 of the Code states:
The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

- (a) Advertising in violation of Section 17500.
- (b) Fraud in the procurement of any license under this chapter.
- (c) Procuring or aiding or offering to procure or aid in criminal abortion.
- (d) Conviction of a crime which substantially relates to the qualifications, functions, or duties of a physical therapist or physical therapy assistant. The record of conviction or a certified copy thereof shall be conclusive evidence of that conviction.
- (e) Impersonating or acting as a proxy for an applicant in any examination given under this chapter.
- (f) Habitual intemperance.
- (g) Addiction to the excessive use of any habit-forming drug.
- (h) Gross negligence in his or her practice as a physical therapist or physical therapy assistant.
- (i) Conviction of a violation of any of the provisions of this chapter or of the State Medical Practice Act, or violating, or attempting to violate, directly or

1 indirectly, or assisting in or abetting the violating of, or conspiring to violate any
2 provision or term of this chapter or of the State Medical Practice Act.

3 (j) The aiding or abetting of any person to violate this chapter or any
4 regulations duly adopted under this chapter.

5 (k) The aiding or abetting of any person to engage in the unlawful practice
6 of physical therapy.

7 (l) The commission of any fraudulent, dishonest, or corrupt act which is
8 substantially related to the qualifications, functions, or duties of a physical
9 therapist or physical therapy assistant.

10 (m) Except for good cause, the knowing failure to protect patients by
11 failing to follow infection control guidelines of the board, thereby risking
12 transmission of blood-borne infectious diseases from licensee to patient, from
13 patient to patient, and from patient to licensee. In administering this subdivision,
14 the board shall consider referencing the standards, regulations, and guidelines of
15 the State Department of Health Services developed pursuant to Section 1250.11 of
16 the Health and Safety Code and the standards, regulations, and guidelines
17 pursuant to the California Occupational Safety and Health Act of 1973 (Part 1
18 (commencing with Section 6300) of Division 5 of the Labor Code) for preventing
19 the transmission of HIV, Hepatitis B, and other blood-borne pathogens in health
20 care settings. As necessary, the board shall consult with the Medical Board of
21 California, the California Board of Podiatric Medicine, the Board of Dental
22 Examiners of California, the Board of Registered Nursing, and the Board of
23 Vocational Nursing and Psychiatric Technicians, to encourage appropriate
24 consistency in the implementation of this subdivision.

25 The board shall seek to ensure that licensees are informed of the
26 responsibility of licensees and others to follow infection control guidelines, and of
27 the most recent scientifically recognized safeguards for minimizing the risk of
28 transmission of blood-borne infectious diseases.

1 (n) The commission of verbal abuse or sexual harassment.

2 6. Section 2661.5 of the Code states:

3 (a) In any order issued in resolution of a disciplinary proceeding before
4 the board, the board may request the administrative law judge to direct any
5 licensee found guilty of unprofessional conduct to pay to the board a sum not to
6 exceed the actual and reasonable costs of the investigation and prosecution of the
7 case.

8 (b) The costs to be assessed shall be fixed by the administrative law judge
9 and shall not in any event be increased by the board. When the board does not
10 adopt a proposed decision and remands the case to an administrative law judge,
11 the administrative law judge shall not increase the amount of the assessed costs
12 specified in the proposed decision.

13 (c) When the payment directed in an order for payment of costs is not
14 made by the licensee, the board may enforce the order of payment by bringing an
15 action in any appropriate court. This right of enforcement shall be in addition to
16 any other rights the board may have as to any licensee directed to pay costs.

17 (d) In any judicial action for the recovery of costs, proof of the board's
18 decision shall be conclusive proof of the validity of the order of payment and the
19 terms for payment.

20 (e) (1) Except as provided in paragraph (2), the board shall not renew or
21 reinstate the license or approval of any person who has failed to pay all of the
22 costs ordered under this section.

23 (2) Notwithstanding paragraph (1), the board may, in its discretion,
24 conditionally renew or reinstate for a maximum of one year the license or
25 approval of any person who demonstrates financial hardship and who enters into a
26 formal agreement with the board to reimburse the board within that one year
27 period for those unpaid costs.

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1 (f) All costs recovered under this section shall be deposited in the
2 Physical Therapy Fund as a reimbursement in either the fiscal year in which the costs are actually
3 recovered or the previous fiscal year, as the board may direct.

4 7. Section 2620.7 of the Code states:

5 (a) A physical therapist shall document his or her evaluation, goals,
6 treatment plan, and summary of treatment in the patient record.

7 (b) A physical therapist shall document the care actually provided to a
8 patient in the patient record.

9 (c) A physical therapist shall sign the patient record legibly.

10 (d) Patient records shall be maintained for a period of no less than seven
11 years following the discharge of the patient, except that the records of
12 unemancipated minors shall be maintained at least one year after the minor has
13 reached the age of 18 years, and not in any case less than seven years.

14 8. Section 725 of the Code states:

15 “Repeated acts of clearly excessive prescribing or administering of drugs or
16 treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts
17 of clearly excessive use of diagnostic or treatment facilities as determined by the standard
18 of the community of licensees is unprofessional conduct for a physician and surgeon,
19 dentist, podiatrist, psychologist, physical therapist, chiropractor, or optometrist.
20 However, pursuant to Section 2241.5, no physician and surgeon in compliance with the
21 California Intractable Pain Treatment Act shall be subject to disciplinary action for
22 lawfully prescribing or administering controlled substances in the course of treatment of a
23 person for intractable pain.”

24 9. Section 810 of the Code states:

25 “(a) It shall constitute unprofessional conduct and grounds for disciplinary action,
26 including suspension or revocation of a license or certificate, for a health care
27 professional to do any of the following in connection with his or her professional
28 activities:

1 “(1) Knowingly present or cause to be presented any false or fraudulent claim for
2 the payment of a loss under a contract of insurance.

3 “(2) Knowingly prepare, make, or subscribe any writing, with intent to present or
4 use the same, or to allow it to be presented or used in support of any false or fraudulent
5 claim.

6 “(b) It shall constitute cause for revocation or suspension of a license or
7 certificate for a health care professional to engage in any conduct prohibited under
8 Section 1871.4 of the Insurance Code or Section 550 of the Penal Code.

9 "(c) (1) It shall constitute cause for automatic suspension of a license or
10 certificate issued pursuant to Chapter 4 (commencing with Section 1600),
11 Chapter 5 (commencing with Section 2000), Chapter 6.6 (commencing
12 with Section 2900), Chapter 7 (commencing with Section 3000), or
13 Chapter 9 (commencing with Section 4000), or pursuant to the
14 Chiropractic Act or the Osteopathic Act, if a licensee or certificate holder
15 has been convicted of any felony involving fraud committed by the
16 licensee or certificate holder in conjunction with providing benefits
17 covered by worker's compensation insurance, or has been convicted of any
18 felony involving Medi-Cal fraud committed by the licensee or certificate
19 holder in conjunction with the Medi-Cal program, including the Denti-Cal
20 element of the Medi-Cal program, pursuant to Chapter 7 (commencing
21 with Section 14000), or Chapter 8 (commencing with Section 14200), of
22 Part 3 of Division 9 of the Welfare and Institutions Code. The board shall
23 convene a disciplinary hearing to determine whether or not the license or
24 certificate shall be suspended, revoked, or some other disposition shall be
25 considered, including, but not limited to, revocation with the opportunity
26 to petition for reinstatement, suspension, or other limitations on the license
27 or certificate as the board deems appropriate.

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1 "(2) It shall constitute cause for automatic suspension and for
2 revocation of a license or certificate issued pursuant to Chapter 4
3 (commencing with Section 1600), Chapter 5 (commencing with
4 Section 2000), Chapter 6.6 (commencing with Section 2900),
5 Chapter 7 (commencing with Section 3000), or Chapter 9
6 (commencing with Section 4000), or pursuant to the Chiropractic
7 Act or the Osteopathic Act, if a licensee or certificate holder has
8 more than one conviction of any felony arising out of separate
9 prosecutions involving fraud committed by the licensee or
10 certificate holder in conjunction with providing benefits covered by
11 worker's compensation insurance, or in conjunction with the Medi-
12 Cal program, including the Denti-Cal element of the Medi-Cal
13 program pursuant to Chapter 7 (commencing with Section 14000),
14 or Chapter 8 (commencing with Section 14200), of Part 3 of
15 Division 9 of the Welfare and Institutions Code. The board shall
16 convene a disciplinary hearing to revoke the license or certificate
17 and an order of revocation shall be issued unless the board finds
18 mitigating circumstances to order some other disposition.

19 "(3) It is the intent of the Legislature that paragraph (2) apply to a
20 licensee or certificate holder who has one or more convictions prior
21 to January 1, 2004, as provided in this subdivision.

22 "(4) Nothing in this subdivision shall preclude a board from
23 suspending or revoking a license or certificate pursuant to any
24 other provision of law.

25 "(5) "Board," as used in this subdivision, means the Dental Board
26 of California, the Medical Board of California, the Board of
27 Psychology, the State Board of Optometry, the California State
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Board of Pharmacy, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners.

"(6) "More than one conviction," as used in this subdivision, means that the licensee or certificate holder has one or more convictions prior to January 1, 2004, and at least one conviction on or after that date, or the licensee or certificate holder has two or more convictions on or after January 1, 2004. However, a licensee or certificate holder who has one or more convictions prior to January 1, 2004, but who has no convictions and is currently licensed or holds a certificate after that date, does not have "more than one conviction" for the purposes of this subdivision.

"(d) As used in this section, health care professional means any person licensed or certified pursuant to this division, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence)

[Bus. & Prof. Code Section 2660 (h)]

10. Respondent is subject to disciplinary action under section 2660 (h) of the Code in that his treatment and care of the patients described herein below constitutes gross negligence. The circumstances are as follows:

A. On or about September 26, 2001, respondent initiated evaluation of patient M.F.¹, an adult female patient, completing the initial evaluation of the patient on September 28, 2001. Respondent billed for two, separate initial physical therapy evaluations for M.F. Respondent provided treatment for two areas of the patient's body, including the neck and upper back as well as lower back. Respondent provided manual therapy, manual traction, therapeutic exercise, ultrasound treatment(s) and unattended

1. Patient names will be abbreviated herein to protect confidentiality. Patients' full names and medical records will be provided upon service of a properly executed Request for Discovery.

1 electrical stimulation. Respondent charged separately for treatment of each physical area
2 treated, i.e., neck, upper back, and lower back. On or about October 25, 2001, respondent
3 documented that he conducted a reevaluation of patient M.F. However, respondent did
4 not indicate in the patient record whether the patient was present in the office on that date
5 for reevaluation.

6 (1). Respondent's double billing for an initial evaluation of patient M.F. and
7 his billing for multiple manual therapy (billing code # CPT 97140²), therapeutic
8 exercise (CPT 97110), and ultrasound (CPT 97035), on multiple dates for services
9 not supported and documented in the patient record, constitutes gross negligence
10 subject to discipline within the meaning of Code section 2660 (h), as does his
11 separate billing for treating different areas of the patient's body and his
12 documenting of a patient "reevaluation" when the patient was not physically
13 present for such reevaluation.

14 B. On or about August 1, 2001, respondent initiated treatment of patient E.B.,
15 an adult female patient, which continued until or about February 26, 2003, with patient
16 billing continued through or about February 28, 2003. Respondent treated E.B. for injury
17 to her neck and shoulder area and lower back. Respondent kept separate records for each
18 area treated. Following treatment, E.B. failed to show any significant measurable or
19 sustainable improvement as a result of the physical therapy respondent provided. The
20 patient continued to report significant pain after a treatment period of approximately one
21 year of therapy. Throughout the period of treatment, respondent recorded findings of
22 "good response to treatment" despite a lack of clinical findings to support his conclusion.
23 Respondent billed E.B. for manual therapy and therapeutic exercise but failed to
24 document services to support time parameters for the use of multiple therapeutic exercise
25 codes relative to billing. Respondent billed the patient for gait training as well as
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28 2. "CPT" refers to "Current Procedural Terminology", a term established by the American
Medical Association (AMA) for billing code descriptions.

1 underwater treadmill treatment, but failed to provide documentation for the services
2 provided. Respondent continued to provide physical therapy of a maintenance nature to
3 the patient for a period in excess of one year without documenting any improvement in
4 the patient's condition, billing for services equating to 2.5 to 3 hours per visit without a
5 clinical foundation or documented results to support ongoing physical therapy for this
6 patient.

7 (1). Respondent's ongoing treatment of patient E.B. without measurable or
8 sustainable benefit and his billing for services with inadequate documentation
9 constitutes gross negligence subject to discipline within the meaning of Code
10 section 2660 (h).

11 C. On or about November 9, 2001, respondent commenced treatment of
12 A.M.L., a female adult patient. The patient had been referred to respondent from Jeffrey
13 Grolig, M.D., for "PT with Greg Gibson, Evaluation and treatment; Myofascial Release
14 and Modalities". Respondent evaluated the patient's cervical spine on or about December
15 5, 2001, and evaluated the patient's lumbar spine on or about December 10, 2001.
16 Respondent kept separate billing records for each area treated. Respondent failed to
17 subsequently record his interventions with the patient relative to the need for ongoing
18 care. On or about January 4, 2002, respondent recorded that the patient had increased
19 mobility but failed to record any quantified data for the patient's progress. The patient
20 continued to complain subjectively of pain, but with a 50-60% decrease in low back pain.
21 Respondent provided no measurable or quantified data with which to evaluate the
22 patient's objective condition. On or about February 12, 2002, respondent recorded an 80-
23 90% improvement in the patient's condition, but again provided no clinical, quantified
24 information to support this finding. Respondent continued treatment through December
25 of 2002. In billing for treatment of patient A.M.L., respondent failed to provide
26 documentation of the interventions used in support of the billing codes he recorded for
27 payment. On or about December 17, 2002, respondent recorded a progress report with
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multiple clinical findings pertaining to a date of service of November 25, 2002, but failed to provide or reference any basis for these findings.

(1). Respondent's failure to provide adequate documentation of patient A.M.L.'s progress supporting the clinical need for ongoing physical therapy, his failure to adequately document services in support of his coded billing for patient A.M.L., and keeping separate billing records for treatment of different areas of the same patient's body (which should have been billed as a single treatment of the patient with one or more areas treated), constitutes gross negligence subject to discipline within the meaning of Code section 2660 (h).

D. On or about October 23, 2002, respondent evaluated T.A., an adult male patient, for injury to his back sustained in two auto accidents occurring on August 25, 2002 and October 16, 2002, respectively. No referral from a medical provider for T.A. was recorded. Notwithstanding the lack of a medical referral, on or about October 25, 2002, respondent evaluated the patient's cervical condition relative to his auto accident injuries. On the same date, respondent commenced treatment, keeping separate billing records for each area treated, one for the neck and upper back and another for the lower back. Respondent recorded care to the back and neck through or about December 18, 2002. However, even though treatment of the neck was discontinued, respondent continued to bill for treatment to both the back and neck areas. Respondent failed to document any treatment to the low back. Respondent billed for physical traction for the patient on multiple visits, but provided no documentation of same. Respondent billed separately for two treatment areas to the body when only one was treated. On or about June 26, 2003, T.A. was provided a new referral date from a Dr. Jack Nichols II, following surgery to the patient's right shoulder. Respondent performed an evaluation on or about July 23, 2003. Respondent subsequently recorded and billed for mechanical traction on nine dates of service but failed to document these services as actually provided. Respondent also failed to document any clinical indications for the traction treatments relative to the shoulder injury.

1 (1). Respondent's billing for treatment of two body areas when only one was
2 treated, his failure to provide documentation to support billing, his failure to
3 record provision of services for which the patient was subsequently billed, and his
4 initial commencement of treatment without medical referral, constitutes gross
5 negligence subject to discipline within the meaning of Code section 2660 (h).

6 SECOND CAUSE FOR DISCIPLINE
7 (Excessive Prescribing Or Treatment)
[Bus. & Prof. Code Section 725]

8 A. Complainant re-alleges paragraph 10, above, and incorporates it by
9 reference herein as if fully set forth at this point.

10 B. Respondent is subject to disciplinary action under section 725 of the Code
11 in that he provided continuous treatment for patients E.B., A.M.L., and T.A., without therapeutic
12 justification or medical indication therefor.

13 THIRD CAUSE FOR DISCIPLINE
14 (False Or Fraudulent Claim)
[Bus. & Prof. Code Section 2660 (l)]

15 C. Complainant re-alleges paragraph 10, above, and incorporates it by
16 reference herein as if fully set forth at this point.

17 D. Respondent is subject to disciplinary action under section 2660 (l) of the
18 Code in that his multiple and/or duplicate billing for treatment of patients E.B., A.M.L., and T.A.
19 constitutes false and/or fraudulent billing.

20 PRAYER

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein
22 alleged, and that following the hearing, the Physical Therapy Board of California issue a
23 decision:

24 A. Revoking or suspending Physical Therapist License Number PT 6982,
25 issued to Phillip Gregory Gibson, P.T.;

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B. Ordering Phillip Gregory Gibson, P.T. to pay the Physical Therapy Board of California the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 2661.3;

C. Taking such other and further action as deemed necessary and proper.

DATED: September 7, 2005

Original Signed By:
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California
Complainant

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Gibson Accusation.wpd
type initials of preparer and date prepared

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